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LICENSED IN MINNESOTA AND WISCONSIN

GRAPHIC LABOR PROVIDED IN-HOUSE

30 July 2012

Jana O'Leary Sullivan, Attorney at Law
Attorney for defendants Jack Molin and City of Crystal
League of Minnesota Cities
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www.lmc.org

Re: Scheffler v. Molin and City of Crystal, 11-CV-3279 (D. Minn. 2012) JNE/JJK

VIA MAIL AND FAX

Dear Ms. Sullivan:

As you may recall, I represent Mr. Troy Scheffler in the above lawsuit. I am in receipt of the defendants' supplemental answer to Mr. Scheffler's request for production of documents.

The supplemental request for production of documents includes a revised Fed. R. Civ. P. 26(b)(5) privilege log. Please find accompanying this letter pages 1 to 3 of the log. The privilege log sets forth each privileged item row-by-row, with various identifying criteria described column-by-column. The final column on the right is entitled "privilege" I note twenty-one items in this log that the defendants list as privileged, yet have no explanation in the "privilege" cell other than "MGDPA". "MGPDPA" is a common abbreviation for "Minnesota Government Data Practices Act."

No item citing "MGDPA" as the privilege has any statutory citation. As you may recall, all data are presumably public data under the MGDPA unless the Act classifies data differently. The following items, identified by date and description, appear to have relevance to this lawsuit, yet the defendants withhold them for no reason other than "MGDPA":

Date	Description
04/01/08	"Investigation-Workplace Conduct Policy Complaint w/Redaction
02/14/11	CBO Continuing Education Summary w/Redaction .
Various	
2002 – 12	Performance Evaluation Forms
09/24/10	Discipline – Employee Conduct at September 9 Administrative Hearing with Redaction

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Date	Description
07/02/09	"Other Personnel Documents"
10/23/08	Other personnel documents
10/27/08	Other personnel documents
04/03/02	Completed employment application with redactions
04/09/02	Miscellaneous notes and forms regarding employment interviewing
09/2010	Complaint investigation (Author: "various City of Crystal employees")
10/2008	Complaint investigation (Author: " " " ")
03/2008	Complaint investigation (Author: " " " ")

The above items identified as data relating to the three employment complaints against Mr. Molin in March-April 2008, October 2008 involving Mr. Scheffler, and September 2010 are governed by Minn. Stat. § 13.43 subd. 2(a)(5). The final disciplinary action, the basis or bases for the action, and the underlying facts are all public data under the MGDPA. *See Edina Educ. Ass'n v. Bd. of Educ. of Indep. School Dist. No. 273 (Edina)*, 562 N.W.2d 306, 311 - 12 (Minn. Ct. App. 1997), review denied, (Minn. June 11, 1997)¹, Comm'r Admin. Op'n 96-004. The above-noted data relating to complaint investigations do not enjoy the protection of any privilege. They are public data. They are accessible to Mr. Scheffler now. Mr. Scheffler demands their release to him forthwith.

The remaining noted data are presumptively public and are accessible to him now. He demands their release forthwith.

This communication represents an effort to meet and confer to resolve a discovery dispute without resort to motion practice in accordance with LR D. Minn. 37.1 and Fed. R. Civ. P. 26, 33, 34, and 37. Mr. Scheffler notes this to be a continuing discovery violation, notwithstanding Mr. Scheffler's first motion to compel discovery and the court's evident disapproval of the defendants' nondisclosure at hearing.

¹ "The fact that the school district later used some of the data to support a letter of deficiency did not change this result; the data became public as personnel data used to document a disciplinary action." *See also Minneapolis Fed'n of Teachers v. Minneapolis Public Schs.*, 512 N.W.2d 107, 111 (Minn. Ct. App. 1994), review denied, (Minn. Mar. 31, 1994) (same).

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Mr. Scheffler demands production of the above data by Friday the 3rd of August, 2012 to avoid additional motion practice in accordance with Fed. R. Civ. P. 26, 34, and 37, and Minn. Stat. § 13.08 subd. 4(a). Please feel free to contact me should you desire to discuss this further.

Very truly yours,

/s/ Peter J. Nickitas
Peter J. Nickitas
Peter J. Nickitas

Enclosure
cc: Mr. Troy Scheffler

Scheffler v. Jack Molin and the City of Crystal, Minnesota
Court File No.:11-CV-3179 (JNE/JJK)

Defendants' Privilege Log (05/11/12)

Date	Type	Author	Addressee	Description	Present Custodian	Privilege
11/24/08	Email	Anne Norris	Michael Norton	Email from Scheffler forwarded to City Attorney w/Redaction	LMC	Attorney Client Privileged communication between City employee and City Attorney
04/01/08	Memorandum	Anne Norris	Jack Molin	Investigation-Workplace Conduct Policy Complaint w/Redaction	LMC	MGDPA
02/14/11	Report	Jack Molin	MN DOLI	CBO Continuing Education Summary w/Redaction	LMC	MGDPA
Various 2002 - 2012	Form	Patrick Peters	Jack Molin	Performance Evaluation Forms	LMC	MGDPA
09/24/10	Memorandum	Anne Norris	Jack Molin	Discipline – Employee Conduct at September 9 Administrative Hearing w/Redactions	LMC	MGDPA

Date	Type	Author	Addressee	Description	Present Custodian	Privilege
07/02/09	Memorandum		Jack Molin	Other Personnel Documents	LMC	MGDPA
10/23/08	Memorandum	Anne Norris	Jack Molin	Other Personnel Documents	LMC	MGDPA
10/27/08	Memorandum	Non-Public	Anne Norris	Other Personnel Documents	LMC	MGDPA
04/20/02	Form	Jack Molin	City of Crystal	Authorization/Release Form	LMC	MGDPA
04/23/02	Form	Jack Molin	City of Crystal	New Employee Driver's License Information	LMC	MGDPA
04/20/02	Letter	Jack Molin	Marquitta Frost	Transmittal of Background Check and Driver's License Clearance	LMC	MGDPA
04/22/02	Record Check	Crystal Police Department		Records Check	LMC	MGDPA
04/03/02	Employment Application	Jack Molin	City of Crystal	Completed employment application w/Redactions	LMC	MGDPA
Undated	Resume	Jack Molin		Personal Resume Form w/Redactions	LMC	MGDPA
04/03/02	Letter	Jack Molin	City of Crystal	Cover Letter to Employment Application Submission	LMC	MGDPA

Date	Type	Author	Addressee	Description	Present Custodian	Privilege
04/09/02	Misc Forms and Notes	Various City of Crystal Employees	City of Crystal	Miscellaneous notes and forms regarding employment interviewing process	LMC	MGDPA
09/2010	File	Various City of Crystal Employees	Anne Norris	Complaint Investigation	LMC	MGDPA
10/2008	File	Various City of Crystal Employees	Anne Norris	Complaint Investigation	LMC	MGDPA
03/2008	File	Various City of Crystal Employees	Anne Norris	Complaint Investigation	LMC	MGDPA
01/02/07	Email	Patrick Peters	Anne Norris	Department Reorganization	LMC	MGDPA
Various 2002 to 2012	Checklists	Jack Molin	City of Crystal	Health Fair Checklists	LMC	MGDPA
05/23/07	Email	Gail Trenholm	Jason Zimmerman	Email String re 6311 Corvallis w/Redactions	LMC	MGDPA
07/20/12 Supplement						
10/15/08	Email	Kim Therres	John Banick	Email string re: Norton advice	LMC	Attorney Client Privileged communication between City employee and City Attorney